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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,697	08/30/2001	Armin Amrhein	A34463 (071308.0222)	9229
31625	7590	07/26/2006	EXAMINER	
BAKER BOTTS L.L.P. PATENT DEPARTMENT 98 SAN JACINTO BLVD., SUITE 1500 AUSTIN, TX 78701-4039				CHANG, SUNRAY
		ART UNIT		PAPER NUMBER
		2121		

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/942,697	AMRHEIN ET AL.
	Examiner	Art Unit
	Sunray Chang	2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 June 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 6-15 is/are pending in the application.
 - 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 6-15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. This office action is in responsive to the paper filed on June 12th, 2006.

Claims 6 – 15 are presented.

Claims 6 – 15 are rejected.

Claims 1 – 5 are cancelled.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 6 – 15 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a *specific and substantial asserted utility*, a *credible* or a well established utility.

Applicants amend the independent claims 6 and 10 with a new subject matter "the running model receives a main clock, said main clock comprising a plurality of clock sources, wherein said plurality of clock sources include at least: an internal timer of the industrial controller, an internal timer of a communication bus, a clock source within an external device, and a clock source within a technological process". The term, "running model receives a plurality of clock sources", has not been cited in specification. Based on the paragraphs of the specification, "the basic clock of the running level model is derived from an internal timer or from an internal clock of a communication medium or from an external device or from a variable which belongs to the technological process" [0014, page 4 – 5, see also 0029, page 12 –

13], it is far away from the new subject matter which claimed by applicants in current amendment.

4. Claims 6 – 15 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a *specific and substantial asserted utility*, a *credible asserted utility* or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Claim Rejections - 35 USC § 112

5. **Claims 6 – 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.**

Specifically, independent claims include limitations drawn to clock sources selection means. But the specification does not disclose the methodology for actually how to make the selection. No algorithms, techniques or flow charts are disclosed. While generating the basic clock, for example, makes references to, [0034], page 15. Applicant's specification appears to be drawn entirely to several different choices of timers, yet, not all of the timer choices is necessarily to be included in the system. Applicants have not disclosed specifically how to make the selection. Such that one skilled in the art could make and/or use the claimed invention without undue experimentation. Dependent claims inherit this defect.

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6. **Claims 6 – 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

Specifically, independent claims include limitations drawn to clock sources selection means. But the specification does not disclose the methodology for actually how to make the selection. No algorithms, techniques or flow charts are disclosed. While generating the basic clock, for example, makes references to, [0034], page 15. Applicant's specification appears to be drawn entirely to several different choices of timers, yet, not all of the timer choices is necessarily to be included in the system. Applicants have not disclosed specifically how to make the selection. Accordingly, a skilled artisan would not know how to make and/or use the claimed invention from the written description contained in the specification. Dependent claims inherit this defect.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. **Claims 6 – 15 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Steven J. Altschuler (U.S. Patent No. 6,778,971 and referred to as **Altschuler** hereinafter), and in view of Terrence L. **Blevins** (U.S. Patent No. 6,445,963 and referred to as **Blevins** hereinafter).
(**Altschuler** as set forth above generally discloses the basic inventions.)

Regarding independent claims 6 , 10 and 13 – 14,

Altschuler teaches,

- A method for the integrating a plurality of automation components in a uniform running level model of a respective runtime system (RTS) of an industrial controller (S); [Abstract, Col. 1, Lines 9 – 20, Col. 6, Line 67 – Col. 8, Line 4]
- a uniform configurable running model for a control task of the industrial controller which can be configured flexibly [Col. 3, Lines 38 – 43] wherein
- the running model receives a main clock and means for providing said main clock to said running model, wherein
- said means for providing said main clock comprise a plurality of clock sources, wherein

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- said plurality of clock sources include at least: an internal timer of the industrial controller, an internal timer of a communication bus, a clock source within an external device, and a clock source within a technological process. [a system clock utility, Col. 14, Line 51] and wherein
- said means for providing said main clock further comprise means to select one of said plurality of clock sources.

Examiner further explains, regarding computer programs, tasks, or software tools are all running in computer system based on the clock of the computer system.

Altschuler does not teach an industrial controller.

Blevins teaches an industrial controller [Col. 1, Lines 5 – 8, Abstract], for the purpose of using of advanced control blocks.

It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the teaching of **Altschuler** to include "an industrial controller", for the purpose of using of advanced control blocks.

Regarding dependent claims 7 and 11,

Altschuler teaches,

- prioritizing the system and user level tasks. [Col. 13, Lines 21 – 36]

Regarding dependent claims 8 and 12,

Altschuler teaches,

- user level tasks are loaded into the at least one user level. [Col. 7, Lines 30 – 38]

Regarding dependent claims 9 and 15,

Altschuler teaches,

- programmed accessing overall functionality from the user programs.

Altschuler does not teach a controller.

Blevins teaches an industrial controller [Col. 1, Lines 5 – 8, Abstract], for the purpose of using of advanced control blocks.

It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the teaching of **Altschuler** to include "an industrial controller", for the purpose of using of advanced control blocks.

Response to Amendment

Claim Rejections - 35 USC § 103

8. Applicants argue that “the system or method at least comprise or provide the four clock sources as stated in these claims and further comprise selection of one of these clock sources as a main clock” (Page 5, lines 5 – 7) has not be stated in the prior arts.

The examiner explains, first, it is not clear that how to make the selection within four different clock sources in a control system; second, there is no specified reason for making the selection of the clock sources; third, one with ordinary skill in the art would know that all computer system program, task, software tools are running in computer systems based on the clock signals of the system, very little patent weight has been given for claiming clock sources.

Altschuler teaches a system clock utility [Col. 14, Line 51] is a clock source within an external device or a clock source within a technological process, which is the main clock of the control system.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunray Chang whose telephone number is (571) 272-3682. The examiner can normally be reached on M-F 7:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on (571) 272-3687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-746-3506.



Anthony Knight
Supervisory Primary Examiner
Group Art Unit 2121
Technology Center 2100
U.S. Patent and Trademark Office

July 20, 2006